



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. DOT-OST-2011-0170]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary, Department of Transportation

ACTION: Notice and Request for comments

Agency Request for Renewal and Partial Modification of a Previously Approved

Collection: Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (Department) intention to reinstate and partially-modify an Office of Management and Budget (OMB) control number as related to the *Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases*. The growth in the use of code-sharing, wet-leasing, and similar marketing tools, particularly in international air transportation, led the Department on March 15, 1999, to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases by carriers (U.S. and foreign) and ticket agents via oral, written, and internet communications. In a recent final rule titled "Enhancing Airline Passenger Protections" (See, 81 FR 76800, November 3, 2016), the Department, among other things, amended the code-share disclosure regulation to require that carriers and ticket agents must disclose any code-share arrangements on their websites, including mobile websites and applications; clarify the format in which that information must be displayed; and specify that verbal code-share disclosures should be made the first time a flight involving a code-share arrangement is offered to consumers or

the first time a consumer inquiries about such a flight whether by telephone or in person conversations.

In compliance with the Paperwork Reduction Act of 1995, this notice also announces that the request for reinstatement and partial-modification of an OMB Control Number for the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A Federal Register Notice with a 60-day comment period soliciting comments on the following information collection was published on September 12, 2017.

DATES: Comments on this notice must be received by (insert 30 days after publication in the Federal Register). Interested persons are invited to submit comments regarding this proposal.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments may also be sent via email to OMB at the following address:

oira_submissions@omb.eop.gov

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley, (202) 366-6792, Daeleen.Chesley@dot.gov, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105-0537

Title: Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

Abstract: Code-sharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version of code-sharing, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a code-sharing arrangement may hold out, market, and sell the flight as its own in published schedules. Code-sharing also refers to other arrangements, such as when a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not hold out the service in its own name. Such code-sharing arrangements are common between commuter air carriers and their larger affiliates. In a wet-lease situation, a leasing arrangement is made whereby the lessor provides both an aircraft and crew to a lessee dedicated to a certain route under either an agreement that lasts more than 60 days or under a series of such lease agreements that amount to a continuing arrangement lasting more than 60 days.

Although code-sharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know the identity of the airline operating the flight. The growth in the use of code-sharing and wet-leasing, particularly in international air transportation, led the Department to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases on March 15, 1999 (14 CFR Part 257). More specifically, the rule requires carriers to provide information about their code-share relationships in written or electronic schedule

information provided by carriers to the public (e.g. the Official Airline Guide/OAG). The rule also requires carriers and ticket agents to disclose code-share information in written notice at the time of a ticket purchase. Further, the regulation requires those entities to tell prospective consumers the first time a flight is identified in all oral communications that the transporting airline is not the airline whose designator code will appear on travel documents and to identify the transporting airline by its corporate name and any other name under which that service is held out to the public.

In 2010, to further enhance these consumer protections, Congress enacted by P.L. 111-216, sec. 210 (August 1, 2010), which was codified as 49 U.S.C. §41712(c). Among other things, the statute requires ticket agents and carriers (U.S. and foreign) to disclose in oral communication or in written or electronic communications (including on the internet), prior to the purchase of a ticket, the name of the carrier providing the air transportation and, if the flight has more than one segment, the name of each carrier providing the air transportation for each flight segment. The statute also requires ticket agents and carriers (U.S. and foreign) that sell tickets on an Internet website to disclose the required information on the first display of their website following a consumer's search of a requested itinerary in a format that is easily visible.

In a recent final rule, Enhancing Airline Passenger Protections III (81 FR 76800, November 3, 2016), the Department clarified its code-share disclosure regulation to ensure that carriers and ticket agents disclose code-share arrangements in schedules, advertisements, and communications with consumers. The rule amended the Department's code-share disclosure regulation to codify the statutory requirement that

carriers and ticket agents must in a format that is easily visible to a viewer disclose any code-share arrangements on the first display of the website following itinerary search results; clarify that the requirement for code-share disclosures in flight itinerary search results and flight schedule displays includes information provided by airlines via mobile websites and applications; clarify the format in which that information must be displayed; and specify that verbal code-share disclosures should be made the first time a flight involving a code-share arrangement is offered to consumers or inquired about by consumers during telephone or in person conversations.

As most of these provisions are implementing the statutory requirement enacted in 2010, carriers and ticket agents should already be complying with most of the requirements.¹ The aspect of the provision which is new is the specification of *when* during a telephone or in-person booking process a carrier or ticket agent must disclose the code-share information, which may result in additional compliance costs for some carriers and ticket agents. Those additional costs would be borne by those carriers and ticket agents that currently do not present code-share information at the first mention of a flight during a reservation call or in-person booking. As such, these carriers and ticket agents may have slightly longer reservation calls and longer in-person bookings. However, the disclosure was already required so the additional time, if any, would be minimal.

¹ The regulated entities that have a website should already have the required information programmed in their systems and that information should already appear on their websites. Thus, the incremental costs to add the information to mobile websites and applications should be small. To the extent there are any costs, they could be minimized if any necessary changes were incorporated at the same time as another upgrade.

In addition to costs for additional agent time during some calls and in-person bookings, some respondents may have a slight increase in their training costs, as they modify their trainings to note that code-share information must be shared when the flight is first presented to the consumer.² These additional training costs are likely to be incurred only by those respondents which do not already present code-share information at the first mention of a flight.

The Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. §§ 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 12, 2017, the Department published a 60-day notice in the Federal Register soliciting comment on ICRs for which the agency was seeking OMB approval (82 FR at 42877). The Department received one comment, but the comment was not relevant to this collection. Accordingly, the Department announces that these information collection activities have been re-evaluated and certified under 5 CFR. 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. § 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. § 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). The 30-day notice informs the regulated

² The costs are minimal if this change is incorporated into agent curricula during the same time as other updates and/or sent in an update bulletin via the carrier's/travel agent's intranet system, as is standard industry practice.

community to file relevant comments to OMB and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995).

Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure their full consideration. 5 CFR 1320.12(c); *see also* 60 FR 44983 (Aug. 29, 1995).

This notice addresses the information collection requirements set forth in the Department's regulation requiring disclosure of code-share and wet-leases, 14 CFR 257. The reinstated OMB control number will be applicable to all the provisions set forth in this notice. The title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

Title: Disclosure of Code-Sharing Arrangements and Long Term Wet Leases in Flight Itineraries and Schedules, Oral Communications with Prospective Consumers, Ticket Confirmations, and Advertisements.

Respondents: All U.S. air carriers and foreign air carriers that participate in code-sharing arrangements or long-term wet leases involving scheduled passenger air transportation; and all ticket agents doing business in the United States that sell scheduled passenger air transportation services involving code-sharing arrangements or long-term wet leases.

Number of Respondents: 12,165 (estimated 48 marketing carriers³ and 12,117 travel agents/tour operators⁴).

³ See, Final Regulatory Impact Analysis for Rulemaking Regarding *Enhancing Airline Passenger Protections III* (FRIA EAPP III) at page 10, prepared by HDR, October 2016.

⁴ See, FRIA EAPP III at page 14.

Estimated Annual Burden on Respondents: 29.26 to 45.65 hours (1,755.6 to 2,739.0 minutes) per year for each respondent. The hours were calculated by using the estimated annual number of code-share related disclosures involving personal contact via a call or in person (58.25 million to 90.87 million)⁵ and multiplying by the estimated average amount of time per trip for an agent to disclose a code-share itinerary (22 seconds or .006111 hours) to determine the total number of burden hours (355,966 to 555,307), and then dividing the total number of burden hours by the estimated number of respondents (12,165).

Estimated Total Annual Burden: Annual reporting burden for this data collection is estimated at 355,966 to 555,307 hours for all travel agents and airline ticket agents who have personal contact (via a call or in person) with a consumer that involves a code-share flight. Most of the data collection associated with this ICR is accomplished through travelers using highly automated computerized systems to make their air travel reservation(s), in which the code-share data is already available on the regulated entities websites and/or is programmed into their database/reservation systems.

Frequency:

For disclosures involving oral communications: The Department estimates 15 seconds per call (to reveal the code-share information) and an average of 1.5 calls per trip

⁵ Per BTS data, there were 932 million enplanements in 2016. See, https://www.rita.dot.gov/bts/press_releases/bts017_17. Of those travel itineraries, the Department estimates that 25% to 39% of these enplanements (233,000,000 to 363,480,000) involve a code-share flight in which an agent must reveal that information. See, https://www.transtats.bts.gov/databases.asp?Mode_ID=1&Mode_Desc=Aviation&Subject_ID2=0. Of these 233,000,000 to 363,480,000 enplanements, the Department also estimates that 25% of travelers (58,250,000 to 90,870,000) make a call to an airline or travel agent to book a ticket or obtain information about a flight and each traveler will only need to obtain the information once per travel itinerary. See, <https://www.asta.org/News/PRDetail.cfm?ItemNumber=14517&navItemNumber=539> and <http://fortune.com/2016/07/27/travel-agents/> (for the estimated number of travelers who use a travel agent).

(a total of 22.5 seconds per respondent per trip) for the approximately 25% to 39% of itineraries that are estimated to involve a code-share itinerary, of which the Department estimates that 25% of travelers make a call to an airline or travel agent to book a ticket or obtain information about a flight and each traveler will only need to obtain the information once per travel itinerary.

For transactions involving written and internet disclosure: The Department estimates the burden should be minimal to non-existent⁶ as many airlines already have a process in place to make code-share information available written in their schedules, by written notice at time of ticket purchase and available on their websites (including mobile sites) and applications. In addition, most marketing airlines currently provide information about their code-share flights to the GDSs who, in turn, provide that information to travel agents. As the code-share information is integrated into the data provided by the airlines to GDSs and travel agents, the code-share information is automatically displayed on the internet/computer, as well as on a printed version of an itinerary/ticket.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

⁶ See, FRIA EAPP III at 27-30.

AUTHORITY: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on March 27, 2018

Claire Barrett

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Office of the Secretary*

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